IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 633 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVNAGAR MUNICIPAL CORPORATION

Versus

LAKHUBHA JITIBHA GOHIL

Appearance:

1. Special Civil Application No. 633 of 1997

MR JR NANAVATI for Petitioner No. 1

MR PH PATHAK for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 21/12/2004

ORAL JUDGEMENT

1. The award and order dated 22.7.1996 of the Labour Court, Bhavnagar in Reference (LCB) No.526 of 1993 whereby the respondent is awarded reinstatement with 50%

backwages and costs of Rs.400/- is under challenge in this petition. The respondent appears to have been employed as a watchman for eight years by the petitioner and, after departmental enquiry into the serious charges of theft, he was dismissed on 7.1.1993. Upon an industrial dispute being raised and referred, the Labour Court has examined the merits of the enquiry and the disciplinary action against the respondent and came to a clear-cut finding to the effect that the punishment of dismissal was excessive, that for property worth Rs.504/the employment of the respondent was snatched away and the petitioner had been negligent in not filing a police complaint at the proper time. The order as aforesaid is expressly made in exercise of the powers of the Labour Court under Section 11-A of the Industrial Disputes Act, 1947 ("the Act" for short).

2. At the time of admission of petition on 17.4.1997, while deciding the question of interim relief, options were given to the petitioner either to reinstate the respondent or pay wages in accordance with the provisions of Section 17-B of the Act, subject to which the operation and execution of the impugned award was stayed. It is stated at the Bar by learned counsel Mr.J.R.Nanavati, appearing for the petitioner, that, pursuant to the aforesaid interim order dated 17.4.1997, the respondent is already reinstated with effect from 1.7.1997.

3. In the above facts and circumstances, the legality and propriety of exercise of power under Section 11-A of the Act is not seriously pressed as far as the relief of reinstatement is concerned. However, learned counsel Mr.Nanavati vehemently argued that this is a case of theft by a watchman and the award of backwages was totally unjustified and improper. Obviously, the respondent has already taken a lenient view and reinstated the respondent and, as recorded in the impugned award, another employee who was discharged along with the respondent has also been reinstated. Therefore, the relief as regards reinstatement is not required to be interfered at this stage. However, accepting the submission of Mr.Nanavati as regards the award of backwages and having regard to the seriousness of the misconduct alleged against the respondent as also his written admission thereof, though subsequently disputed, the impugned award is set aside to the extent the backwages are ordered to be paid with costs.

4. Accordingly, the petition is partly allowed and the impugned award and order is modified to the extent

that the petitioner shall not be required to pay any amount by way of backwages or costs. Rest of the order of reinstatement, which is already implemented, remains intact. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)